

STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

HON. DAVID MARTIN BRADFIELD
Judge, 36th District Court
Detroit, MI 48226

FORMAL COMPLAINT NO. 79

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**RESPONDENT JUDGE DAVID BRADFIELD'S
OBJECTIONS TO THE MASTER'S REPORT**

Respondent Judge David Bradfield submits the following statement of objections to the Master's report, and the attached brief in support, under MCR 9.215:

1. The Master abused his discretion in excluding evidence of emails between members of the bench regarding security concerns, and testimony from Viola Coleman regarding Judge Bradfield's prior conduct. The emails between members of the bench were relevant to show the security concerns that motivated Judge Bradfield and the context in which he acted. The testimony of Viola Coleman was relevant to establishing Judge Bradfield's manner of dealing with unauthorized parkers, and also to refute the instances of prior conduct that the Examiner injected into the proceedings.

2. The exclusion of evidence in support of Judge Bradfield's version of events and the Examiner's Hearing Memorandum unfairly influenced the Masters' findings.

3. The Master erred in concluding that Judge Bradfield committed criminal assault.

4. Judge Bradfield should not have been forced to defend against charges that allegedly occurred years ago and were never pursued or brought to his attention at that time.

The count alleging an incident at the Gem Theatre parking structure should be dismissed.

5. A public reprimand is a sufficient sanction.

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings this 24th day of October, 2005.

By: ☐ U.S. Mail
☒ Hand Delivered
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**RESPONDENT JUDGE DAVID MARTIN BRADFIELD'S
BRIEF IN SUPPORT OF OBJECTIONS TO
THE MASTER'S REPORT**

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FACTS

Background

Judge David Martin Bradfield has been a judge on the 36th District Court for more than eighteen years. *Tr*, 253-254.¹ From 1987 to 1990, he was Director of Security for the court. *Tr*, 275.

The 36th District Court building has two entrances, one main entrance for the public which is equipped with security screening, and a judges' door on the side of the building. Only judges, or a person accompanying a judge, are permitted to enter through the judges' door. *Tr*, 165.

Inside the judges' door is a small vestibule area. Only authorized persons may be there. *Tr*, 104. There are no screening devices in the vestibule. *Tr*, 104-105. Inside the vestibule is an elevator that leads to a corridor separating the judges' chambers and the courtrooms, and the cashier's office. *Tr*, 101-102, 258. This is a nonpublic area. *Tr*, 103-104.

On March 17, 2005, just a few weeks before the incident at issue here, Chief Judge Marilyn Atkins sent a memorandum email to the judges expressing concern about security at the judges' door, and implementing steps to be taken to improve security. *Tr*, 193. Among the policies was the requirement that judges must go downstairs and escort their visitors into the court themselves; they may not send their staff to bring in visitors through the judges' door. *Tr*, 193. If a judge did not personally go and escort his visitor into the building, then the visitor would be directed to the front, public entrance where there is a security check. *Tr*, 194-195. This was the procedure expected of all judges as of March 17, 2005, without exception. *Tr*, 195, 197, 199.

The April 6, 2005 incident

On April 6, 2005 during the noon hour, Judge Bradfield was returning to the court. *Tr*, 261. Judge Bradfield saw an individual sitting in a parked car on Monroe Street next to the courthouse. *Tr*, 25-26, 261. The man, later identified as Anthony Adams, was waiting for his

¹ Transcript of Judicial Tenure Commission Hearing, August 24, 2005.

wife, Judge Deborah Ross Adams, to come down to the car for lunch plans that they had made. *Tr*, pp 25-26. Mr. Adams is also the deputy mayor of the City of Detroit.

Judge Bradfield did not know Mr. Adams. Judge Bradfield looked for a parking pass on the car. The judges have passes that are visible in their cars showing entitlement to park on the street outside the courthouse. *Tr*, 55. Mr. Adams had no such pass. *Tr*, 55. The car also had no other identification that it was a city-owned vehicle, nor any indication that the driver had authority to park next to the court. *Tr*, 55, 262, 265. There was nothing inside Mr. Adams' car that would reflect he was on city business, and in fact at that time he was not at the court on city business. *Tr*, 55.

Judge Bradfield stopped his car next to Mr. Adams' car and requested that Mr. Adams move his car.² Judge Bradfield pointed to the sign that prohibited public parking and told Mr. Adams that parking in that area was for judges and court personnel only. *Tr*, 265.

Although Mr. Adams recognized Judge Bradfield, Mr. Adams did not identify himself as the deputy mayor, or as Judge Adams' husband. *Tr*, 30. Mr. Adams had no visible identification showing that he was a city employee. *Tr*, 59-60. Per Judge Bradfield, Mr. Adams responded, "Take a pill." *Tr*, 266. Mr. Adams testified that he did not say anything to Judge Bradfield and ignored the request to move his automobile. *Tr*, 31.

Judge Bradfield next told Mr. Adams that he could be ticketed and towed. Still Mr. Adams did not respond. *Tr*, 266. Then Judge Bradfield identified himself, to which Mr. Adams retorted, "We know who you are Mother Fucker." *Tr*, 266. Judge Bradfield then responded, "I can be as street as you are. Move the mother fuckin' car." *Tr*, 266.

Judge Bradfield backed his car away from Mr. Adams' vehicle, and motioned to a nearby police officer. The officer (Officer Gray) came out of the judges' door. *Tr*, 31, 267-268. The

² Judge Bradfield and Mr. Adams dispute whether a parking space was available. Mr. Adams says there was. A review of a security tape will support Judge Bradfield's statement that there were no spaces available when he returned to the courthouse.

officer went over to speak to Mr. Adams and asked him to move his car. *Tr*, 31. Mr. Adams then moved his car three feet forward. *Tr*, 32, 269. Still there was not enough space for Judge Bradfield to park. *Tr*, 269. Judge Bradfield drove his car and stopped it next to Mr. Adams' car and again asked Mr. Adams to move his car or else he would be towed. *Tr*, 32. Mr. Adams "didn't respond. [He] just sat there and looked at [Judge Bradfield]." *Tr*, 32.

At the officer's request, Mr. Adams moved his car into a newly vacant space, and Judge Bradfield parked where Mr. Adams' car had been parked. *Tr*, 270.

Judge Adams' clerk, DiAnn Webb, came out of the judges' door and approached Mr. Adams. *Tr*, 32, 80. She told him that his wife was in the middle of a court proceeding, and Mr. Adams would have to come upstairs. *Tr*, 32-33. Ms. Webb intended to escort Mr. Adams into the building through the judges' door and up the judges' elevator, despite the rule in place at that time that required judges to go downstairs themselves and escort their guests, without exception. *Tr*, 127, 132, 195-196. What Judge Bradfield saw was Mr. Adams exit his car and walk quickly toward the judges' door. *Tr*, 33, 271.

Because Judge Bradfield did not know Mr. Adams, he was concerned for the safety of the building. Therefore, Judge Bradfield attempted to stop Mr. Adams. Judge Bradfield testified:

I didn't know who this 6'4" person was, what his intentions were with regard to two 5'4" 5'5" females that were standing there. Ms. Webb is not that tall, and neither is the officer. I didn't know what was going on, since I don't know who this person was. So I got out of my vehicle and went to the door and blocked him and said, you can't come in here; you have to go to the front. [*Tr*, 272.]

According to Mr. Adams, Judge Bradfield poked him in the chest and told him that he (Mr. Adams) was not authorized to use the judges' entrance.³ *Tr*, 34, 145, 272. Officer Gray testified that Judge Bradfield touched Mr. Adams' chest as part of the conversation Judge Bradfield was having with Mr. Adams, as a gesture to emphasize his point that Mr. Adams was not permitted to

³ Judge Bradfield acknowledged that he touched Mr. Adams by trying to get Mr. Adams' attention and directing him toward the public door. *Tr*, 272, 274.

enter through the judges' door. *Tr*, 161, 172-173. Judge Bradfield pointed to the front entrance. *Exhibit 10* at hearing, *DVD containing video footage*. Officer Gray instructed Mr. Adams and Ms. Webb to use the public entrance. *Tr*, 36.

Judge Adams learned about the incident from Mr. Adams and/or Ms. Webb. She immediately left the bench and went downstairs to talk to the officer about the incident. *Tr*, 41, 109-110. She used the judges' elevator. *Tr*, 41. When she arrived on the ground floor in the vestibule area, Judge Adams asked Officer Gray what had happened. *Tr*, 113. Per Officer Gray, Judge Adams "was upset about the situation" and she was talking loudly and aggressively. *Tr*, 175. Officer Morris Syfax described Judge Adams as "excited" and "disturbed", and "[i]t wasn't a calm voice she was using." *Tr*, 234-235. Judge Adams demanded to know how Officer Gray "let the incident happen." *Tr*, 175-176.

At that point Judge Bradfield came into the vestibule and Judge Adams angrily confronted Judge Bradfield. She was yelling. *Tr*, 42, 116, 275-276.

Judge Bradfield tried to explain that he did not know who Mr. Adams was. *Tr*, 133, 275-276. He told her that her husband was not supposed to be coming in through the judges' door, and was not supposed to be parking on the street. *Tr*, 275-276.

At the point of his contact with Judge Adams, Judge Bradfield was speaking in a controlled manner. *Tr*, 276. To Officer Syfax, Judge Bradfield "didn't seem like he was upset. He was just explaining to [Mr. Adams], listen, I didn't know who you were, all right?" *Tr*, 237.

Judge Adams "wanted to continue on with regard to the fact that [he] had no business talking to her husband" and did not "have any authority to say anything to him whatsoever[.]" *Tr*, 276. Judge Adams told Judge Bradfield that her husband "doesn't have to tell you who he is." *Tr*, 276.

Later that day, Chief Judge Marilyn Atkins held a meeting in her chambers with Judge Bradfield, Judge Adams, Mr. Adams, Ms. Webb, and the officers. *Tr*, 45. Judge Bradfield

described Judge Adams' demeanor in the meeting as "still hot." *Tr*, 280. He admitted that he also "was hot because this whole thing could have been avoided just on the basis of somebody identifying themselves to being with." *Tr*, 280. Judge Bradfield admitted having previously called Mr. Adams an expletive, but again emphasized that he did not know who Mr. Adams was and that he was merely responding in kind. *Tr*, 135, 140-141.

Judge Atkins had a similar recall about Judge Bradfield's and Judge Adams' mutually heated exchange during the in-chambers meeting. She remembered that Judge Adams was animated and was loud. *Tr*, 200-201. Judge Adams and Judge Bradfield were on opposite sides of the conference table, and both of them were pointing at each other, making their points. *Tr*, 201. Chief Judge Atkins testified that Judge Bradfield raised his voice in response to Judge Adams raising her voice:

[A]t first his demeanor was he was trying to explain to – his conversation, his conversing was more so with Judge Deborah Ross Adams, and she took issue at the way he spoke to her husband, and she began to – as she elevated her voice, Judge Bradfield did the same, and it turned out to be finger pointing, and Judge Bradfield raised his voice at her and was shaking his finger in her face – toward her." [*Tr*, 190.]

Chief Judge Atkins further testified:

Q. [by Mr. Fischer] Did he touch her at all?

A. No, he did not.

Q. Did he use profanity at all?

A. No, he did not. [*Tr*, 191.]

If Judge Bradfield had known that Mr. Adams was the deputy mayor, "it would have been probably the same thing as most everybody else does is defer to the fact of his office, but he never told me." *Tr*, 283. Judge Bradfield admitted that his language was inappropriate and unjustified, but it was provoked by Mr. Adams' foul language toward him. *Tr*, 204, 284.

Ms. Webb was also present at the in-chambers meeting. She testified that the *only* time that Judge Bradfield used the "mother fucker" phrase during the meeting was in describing what had happened outside. *Tr*, 149-150. Chief Judge Atkins had the same recollection, that Judge

Bradfield used the phrase "mother fucker" only in explaining what had happened earlier. *Tr*, 191. She remembered Judge Bradfield stating, "I'm not going to take anyone talking to me like that," and stating that Mr. Adams had sworn at him and acted belligerently toward him. *Tr*, 191-192, 205.

The Gem Theatre parking structure incident

The 36th District Court leased space in the Gem Theatre parking structure for judges to park on the first floor of the parking structure. The lease began on October 7, 2002. *Tr*, 186, 207.

Parking Manager Noah Lee was working at the ticket booth at the entrance to the structure on the Wednesday before the agreement was to take effect. *Tr*, 207. A man driving a Corvette entered the parking structure and identified himself to Mr. Lee as a judge. *Tr*, 208, 210. Mr. Lee explained that the agreement would not begin until the following Wednesday, and showed the man a letter to that effect. *Tr*, 209-210. The man did not read the letter; he "just flung the document down" and left the parking lot. *Tr*, 211. The man did not use profane language. *Tr*, 210.

Mr. Lee told Otis Davis, the court administrator, about the incident. *Tr*, 223. Mr. Davis assumed that the judge was Judge Bradfield because Mr. Lee described the car as a silver Corvette, although Mr. Davis was aware that other judges drove Corvettes. *Tr*, 229. Mr. Davis never told anybody about the incident, nor did he follow up in any way. *Tr*, 226.

The first time that Judge Bradfield became aware of the complaint about the alleged incident at the Gem Theatre parking structure was when he received the Judicial Tenure Commission notification in April 2005. Judge Bradfield knew Mr. Lee from parking in the facility for a period of time, and he remembered speaking to Mr. Lee about his cars. *Tr*, 287. Judge Bradfield never talked to anyone about the alleged incident and has no recollection of it having occurred. *Tr*, 288-289.

Procedural facts

Before the hearing before the Master, the Examiner filed a "Hearing Memorandum" on the pretext of providing the Master with background information. In actuality, the Examiner's brief was an attempt to improperly influence the Master with reference to prior allegations against Judge Bradfield. *Examiner's Hearing Memorandum*. In his brief, the Examiner cited case law with gratuitous, parenthetical comments such as "another assault case involving this same judge" and "another loss-of-demeanor case not coincidentally involving this same Respondent." *Id.*, pp 7, 9.

At the hearing, Judge Bradfield tried to introduce two emails. One was from Judge Patricia Jefferson to members of the bench concerning security. *Tr*, 92. The email also included a reply written by Judge David Robinson. *Tr*, 93. The second (proposed) email exhibit was the March 17, 2005 email from Chief Judge Atkins to members of the bench about court security. *Tr*, 94. The Examiner objected to the admission of the emails on relevancy grounds. *Tr*, 97. The Master sustained the objections. *Tr*, 97.

Judge Bradfield also sought to introduce the testimony of Viola Coleman. Ms. Coleman was employed by Wackenhut Security Company. Wackenhut provided security services at the court for many years, until just days before the incident which is the subject of these proceedings. *Tr*, 243. Ms. Coleman was stationed at the judges' door. *Tr*, 244. Ms. Coleman often heard Judge Bradfield inform persons who were unwilling to move their vehicles that they were not permitted to park on the street in the area reserved for judges. *Tr*, 250. She testified that Judge Bradfield was never rude, and never spoke in an offensive manner. *Tr*, 250.

The Examiner objected to the admission of Ms. Coleman's testimony on relevancy grounds. *Tr*, 248. Respondent's counsel argued that the Master had already heard testimony from several witnesses about Judge Bradfield's character and his prior conduct, and that therefore Ms. Coleman's testimony should be permitted to refute that evidence. *Tr*, 248-249. Counsel also

argued that the evidence was admissible under MRE 405 (Methods of Proving Character), and MRE 406 (Habit, Routine Practice). The Master excluded Ms. Coleman's testimony as not relevant. *Tr*, 249.

During the Examiner's closing argument, he referred repeatedly to Judge Bradfield's prior conduct regarding the parking situation outside the court and Judge Bradfield's concern about security. The Examiner made the following derogatory comment about Judge Bradfield's prior conduct: "... [T]here is some issue that the judge has with regard to parking that he sees – takes it upon himself to run around for ten years telling people where they can and cannot park." *Tr*, 315. The Examiner repeated his comment in his reply argument, stating that Judge Bradfield "spent ten years running around checking where people were parking." *Tr*, 322.

Respondent's counsel objected before the Master, and the Master sustained the objection:

Mr. Einhorn: Your Honor, this is so unfair to prevent us to bring in conduct about it and then have him argue of his prior conduct.

Mr. Fisher: I am not arguing –

Mr. Einhorn: It is unfair.

Mr. Fischer: I'm not arguing the prior conduct. That's what the witness testified.

Mr. Einhorn: Yes, he is. He's arguing the prior offenses.

The Master: Okay. Prior conduct is being argued; I would agree. [*Tr*, 323.]

The Master subsequently issued an opinion in which he labeled Judge Bradfield an "officious intermeddler." *Findings of Fact and Conclusions of Law*, p 28. The Master found that Judge Bradfield initiated the encounter with Mr. Adams, and he rejected Judge Bradfield's testimony that Mr. Adams' failure to identify himself contributed to the altercation. *Id.*, p 29. The Master found that Judge Bradfield "committed both a criminal and a civil assault and battery" upon Mr. Adams when he poked him in the chest. *Id.*, p 30. The Master also found that Judge Bradfield was involved in the incident at the Gem Theatre parking structure. *Id.*, pp 32-33.

The Master concluded that Judge Bradfield's conduct constituted "irresponsible . . . conduct which erodes the public confidence in the judiciary (CJC Canon 2A), conduct involving impropriety or the appearance of impropriety, (CJC Canon 2A), a failure to respect and observe

the law and to conduct himself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, (CJC Canon 2B), conduct that exposes the courts to obloquy, contempt, censure, or reproach, (MCR 9.104(A)(2)), and conduct that violates a criminal law, (MCR 9.104(A)(5)). *Id.*, pp 35-36.

The Master determined that Canon 3(A)(3) was inapplicable because Judge Bradfield was not acting in an adjudicative capacity. The Master also concluded that Judge Bradfield's conduct did not constitute "conduct which is contrary to justice, ethics, honesty or good morals," MCR 9.104(A)(3). Lastly, the Master declined to address the allegations of misconduct in office. *Id.*, pp 36-37.

ARGUMENT I

The Master abused his discretion in excluding evidence of emails between members of the bench regarding security concerns, and testimony from Viola Coleman regarding Judge Bradfield's prior conduct.

MCR 9.211 provides that the public hearing "must conform as nearly as possible to the rules of procedure and evidence governing the trial of civil actions in the circuit court." Generally, "all relevant evidence is admissible[.]" MRE 402; *Waknin v Chamberlain*, 467 Mich 329, 333; 653 NW2d 176 (2002). MRE 401 defines relevant evidence as that "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Id.*

The emails between members of the bench were relevant to show the security concerns that motivated Judge Bradfield and the context in which he acted.

The incident involving Mr. Adams was preceded by a series of emails between judges of the 36th District Court regarding security at the court, and specifically, the judges' entrance. At the hearing, Judge Bradfield tried to introduce two of these emails. One was from Judge Patricia Jefferson to members of the bench concerning physical security. *Tr*, 92. The email also included Judge David Robinson's reply. *Tr*, 93. The concern was prompted by recent murders of a judge and judge's family that had occurred in Chicago and Atlanta. *Tr*, 256-257. The second proposed

email exhibit was the March 17, 2005 email from Chief Judge Atkins to members of the bench about court security. *Tr*, 94. The Examiner objected to the admission of the emails on relevancy grounds, and the Master sustained the objection. *Tr*, 97.

The emails addressing security concerns were relevant to providing a context in which to evaluate Judge Bradfield's conduct. Judge Bradfield had had several discussions with Judge Atkins and other judges about problems with the judges' door and parking, and he shared their concerns about security. *Tr*, 257-258. Judge Bradfield testified:

Well, we're concerned with people coming out that [judges'] door, not having the authority to be in that elevator to go up the door – through the door up into the areas, that would be open to an individual trying to get in there to possibly rob the cashier, which has open access on the second floor directly. . . [*Tr*, 258.]

The evidence of the ongoing security concerns was relevant to assessing Judge Bradfield's conduct. The Master chose to disregard Judge Bradfield's testimony and instead found that Judge Bradfield was motivated entirely by irrational anger. The Master labeled him an "officious intermeddler," as if Judge Bradfield's concern about persons entering the courthouse through a non-secured area was unreasonable. The emails between the judges corroborated Judge Bradfield's testimony that security was a major concern at the court. Judge Bradfield's conduct did not happen in a vacuum, and it cannot be examined as if it did.

The Master also chose to disregard Judge Bradfield's testimony that Mr. Adams' failure to identify himself contributed to the altercation. The security concerns that prompted Judge Bradfield to approach this unknown person were only heightened when Mr. Adams failed to identify himself, and then attempted to enter the building through the judges' door. Judge Bradfield had no way of knowing whether Mr. Adams was entitled to park on the street or use the judges' entrances. Without knowing who Mr. Adams was, Judge Bradfield could easily assume that Mr. Adams had no business utilizing parking reserved for the court or using the judges' entrance. His statement that for all he knew, Mr. Adams could have been a "well dressed thug", which the Master rejected, further bolsters his explanation that security concerns motivated his

conduct. The Master found that Judge Bradfield's anger was "irrational." The judges' emails to the bench stressing the importance of observing security procedures had the tendency to make Judge Bradfield's explanation of the incident more likely and his anger understandable. The emails were relevant and should have been admitted.

The testimony of Viola Coleman was relevant to establishing Judge Bradfield's manner of dealing with unauthorized parkers, and also to refute the instances of prior conduct that the Examiner injected into the proceedings.

Judge Bradfield sought to introduce the testimony of Wackenhut Security person, Viola Coleman. Ms. Coleman was employed by Wackenhut Security Company. Wackenhut provided security services at the court for many years, until just days before this incident. *Tr*, 243. Ms. Coleman was stationed at the judges' door, and she often observed Judge Bradfield interacting with persons who had parked in the restricted area outside the courthouse.

Ms. Coleman heard Judge Bradfield inform persons that they were not permitted to park on the street in the area reserved for judges. *Tr*, 250. She testified that Judge Bradfield was never rude, and never spoke in an offensive manner. *Tr*, 250. The Examiner objected to the admission of Ms. Coleman's testimony on relevancy grounds. *Tr*, 248. Despite the fact that the Master had already heard testimony from several witnesses about Judge Bradfield's character and his prior conduct, and the fact that Ms. Coleman's testimony would tend to contradict Mr. Adams' statement that Judge Bradfield was rude, the Master excluded the testimony as not relevant. *Tr*, 248-249.

In a separate record, Ms. Coleman testified as follows:

Q. [by Mr. Einhorn] Ms. Coleman, you have observed Judge Bradfield talking to people who are parked outside the court?

A. Yes.

Q. Have you ever heard him come up to somebody and say, move your car, MF?

A. No.

Q. Okay. Tell the Court what it is that you observed and heard him do.

A. Well, basically, you know, he may tell the person, say if he drives up and that person is sitting in the vehicle and there's no place to park, he'll just ask them to move the vehicle or say you can't park here, something to that effect.

Q. I mean have you – have you – when he tells somebody you can't park here, does he raise his voice? Does he say it in an authoritative manner? How does he go about doing that?

A. Maybe in an authoritative manner, but not in a rude way, no.

Q. In your – in your dealings with Judge Bradfield – and – how many times did you observe him or listen to him comment to people or talk to people who were parked out there?

A. Observe or listen? Because sometimes it's across the street.

Q. Sure.

A. But I can't hear.

Q. Let's talk about listen.

A. Okay. I can't count the times. You know, I was like over there for six, six and a half years. I have no way of putting number to that, so . . .

Q. But it was certainly more than one and more than ten.

A. Oh, yes.

Q. All right. And on any of those occasions, did you ever hear him when he approached somebody approach them in an offensive manner?

A. No. [Tr, pp 250-251.]

Judge Bradfield was entitled to have the Master consider Ms. Coleman's testimony, and the exclusion of this evidence severely prejudiced Judge Bradfield's ability to defend against the allegations. During the Examiner's closing argument, he referred repeatedly to Judge Bradfield's prior conduct regarding the parking situation outside the court and Judge Bradfield's concern about security. The Examiner made the following derogatory comment about Judge Bradfield's prior conduct: ". . . [T]here is some issue that the judge has with regard to parking that he sees – takes it upon himself to run around for ten years telling people where they can and cannot park." Tr, 315. The Examiner repeated his comment in his reply argument, stating again that Judge Bradfield "spent ten years running around checking where people were parking." Tr, 322. The Examiner's derogatory comments were not only unsupported, but they would have been contradicted by the excluded testimony of Ms. Coleman.

Counsel for Judge Bradfield raised the unfairness of precluding evidence of Judge Bradfield's prior conduct yet allowing the Examiner to argue it. Although the Master sustained the objection, the prejudicial effect of the Examiner's repeated argument about Judge Bradfield's prior conduct is apparent from the Master's findings. Indeed, the Master was improperly

influenced at the beginning of these proceedings by the Examiner's hearing memorandum that served no purpose other than to expose the fact finder to instances of prior conduct.

The exclusion of evidence in support of Judge Bradfield's version of events and the Examiner's Hearing Memorandum unfairly influenced the Master's findings.

The Master's finding that Judge Bradfield was an "officious intermeddler" shows animus for Judge Bradfield. This finding is an attack against Judge Bradfield's character, not a comment on his conduct. The Master's task is to make findings of fact regarding the alleged conduct as set forth in the complaint. MCR 9.214. Unfounded, stray remarks about Judge Bradfield's personality are improper.

The Master's malevolence toward Judge Bradfield is also demonstrated by his findings that Judge Bradfield continually exhibited bad behavior and displayed anger throughout the incident and the meeting with Judge Atkins. The evidence is to the contrary. The Master found that in the vestibule, Judge Bradfield was using "vulgar epithets" and "challen[ing]" Mr. Adams. *Master's Findings of Fact and Conclusions of Law, p 31.* But the Master ignored the testimony of Officer Syfax who testified that at that point, Judge Bradfield "didn't seem like he was upset. He was just explaining to [Mr. Adams], listen, I didn't know who you were, all right?" *Tr, 237.* The Master also found that "Judge Bradfield's irrational anger continued when he was summoned to Judge Atkins' chambers[.]" *Master's Findings of Fact and Conclusions of Law, p 31.* But the Master chose to ignore the testimony of Chief Judge Atkins and DiAnn Webb. To the contrary, Judge Atkins testified that Judge Bradfield raised his voice *in response to* Judge Adams' raised voice:

[A]t first his demeanor was he was trying to explain to – his conversation, his conversing was more so with Judge Deborah Ross Adams, and she took issue at the way he spoke to her husband, and she began to – as she elevated her voice, Judge Bradfield did the same, and it turned out to be finger pointing, and Judge Bradfield raised his voice at her and was shaking his finger in her fact – toward her." [*Tr, 190.*]

Chief Judge Atkins also testified that Judge Bradfield did not touch Judge Adams, nor did he use profanity:

Q. [by Mr. Fischer] Did he touch her at all?

A. No, he did not.

Q. Did he use profanity at all?

A. No, he did not. [*Tr*, 191.]

Both Judge Atkins and DiAnn Webb testified that the *only* time that Judge Bradfield used the “mother fucker” phrase during the meeting was in describing what had already happened. *Tr*, 149-150, 191.

The Master chose to ignore Judge Bradfield’s testimony that although he swore at Mr. Adams, Judge Bradfield was merely responding in kind. *Tr*, 135, 140-141. Judge Bradfield admitted that his language was inappropriate and unjustified, but it was provoked by Mr. Adams’ foul language toward him. *Tr*, 204, 284. An observer can easily think that the Master was predisposed to disbelieve Judge Bradfield, and the witnesses’ testimony in support of his version of events.

ARGUMENT II

The Master erred in concluding that Judge Bradfield committed criminal assault.

An assault is “an attempt or offer with force and violence to do corporal hurt to another.” *People v Bailey*, 451 Mich 657, 668-669; 549 NW2d 325 (1996). A battery is the consummation of an assault. *People v Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996). Assault and battery is a specific intent crime. “There must be either an intent to injure or an intent to put the victim in reasonable fear or apprehension of an immediate battery.” *People v Datema*, 448 Mich 585, 602; 533 NW2d 272 (1995); *People v Johnson*, 407 Mich 196, 210; 284 NW2d 718 (1979). See also *People v Lardie*, 452 Mich 231, 264 n 55; 551 NW2d 656 (1996) (when the defendant is charged with simple assault, “the jury should be instructed that there must be either an intent to injure or an intent to put the victim in reasonable fear of apprehension of an immediate battery”).

As an initial matter, no criminal proceedings came out of this incident. Mr. Adams did not press charges against Judge Bradfield. *Tr*, 50.

The basis of the Master's assault and battery finding was Mr. Adams' testimony that Judge Bradfield poked Mr. Adams in the chest. Judge Bradfield acknowledged that he touched Mr. Adams, but explained that the contact was unintentional. Officer Gray testified that Judge Bradfield touched Mr. Adams' chest as part of the conversation Judge Bradfield was having with Mr. Adams, stressing that Mr. Adams was not permitted to enter through the judges' door:

Q. [by Mr. Einhorn] Did it appear to you to be part of the conversation of the confrontation that Judge Bradfield was having? In other words, you can't go there and –

A. Yes.

Q. – pressing his finger?

A. It was like that.

Q. Pardon me?

A. Yes.

Q. It was sort of like an explanation point for what he was – the point he was trying to make?

A. Yes. [*Tr*, 173.]

Judge Bradfield's and Officer Gray's testimony negates any suggestion that Judge Bradfield had a specific intent to support a finding of an assault. Even Mr. Adams testified that the poking occurred as Judge Bradfield was informing him that he could not use the judges' entrance. *Tr*, 34. Mr. Adams never stated that he was worried about his safety or feared that Judge Bradfield would hurt him. Judge Bradfield did not intend to injure Mr. Adams or place him in fear of a battery.

The Master ignored the testimony of Judge Bradfield and Officer Gray that the contact with Mr. Adams was unintentional. The Master's finding of assault was seemingly based solely on the fact of the touching, without any finding of specific intent by Judge Bradfield. This finding was erroneous.

ARGUMENT III

Judge Bradfield should not have been forced to defend against charges that allegedly occurred years ago and were never pursued or brought to his attention at that time.

The incident giving rise to the charge against Judge Bradfield concerning the Gem Theatre parking structure allegedly occurred three years ago, in October 2002. Although there is no statute of limitations applicable in this matter, the policy reasons for statutes of limitation are implicated. Statutes of limitation are intended to “compel the exercise of a right of actions within a reasonable time *so that the opposing party has a fair opportunity to defend*” and relieve the court system from stale claims “where *the facts in dispute occurred so long ago that evidence was either forgotten or manufactured.*” *Chase v Sabin*, 445 Mich 190, 199; 516 NW2d 60 (1994); *Shields v Shell Oil Co*, 237 Mich App 682, 690; 604 NW2d 719 (1999).

Judge Bradfield was denied a fair opportunity to defend against these charges and the facts occurred so long ago that evidence was either forgotten or manufactured. Judge Bradfield first became aware of the complaint about the alleged incident at the Gem Theatre parking structure when he received the Judicial Tenure Commission notification in April 2005 – two and a half years after the alleged incident. Judge Bradfield has no recollection of it having occurred. *Tr*, 288-289.

Mr. Lee had difficulty testifying because of the long lapse in time since the incident. He explained more than once, “This has been a long time. I didn’t know this incident was going to come back.” *Tr*, 209-210, 218.

It is unfair to require Judge Bradfield to defend himself against charges of an incident that was clearly so insignificant that it prompted no charges or further discussion at the time. Mr. Davis never told anybody about the incident, nor did he follow up in any way. *Tr*, 226. Mr. Lee testified that he never talked to Judge Bradfield about the alleged incident. *Tr*, 220. Yet the Examiner faulted Judge Bradfield for not being able to definitively state that it was not he who

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was involved in the incident. The Examiner argued that Judge Bradfield “*still* cannot say it was not he who drove in the Gem parking lot[.]” *Tr*, 316. The Examiner’s use of the word “still” falsely implies that Judge Bradfield had been asked about the alleged incident previously, or that he is expected to suddenly remember if given enough time. The fact is that Judge Bradfield did not recall any such incident. He is asked to defend against something that happened years ago, an incident so minor that no one even complained to him about it. Indeed, the Examiner conceded in closing argument that “if the Gem Theatre incident were the only incident, we wouldn’t be before you.” *Tr*, 322.

Mr. Lee testified that the man who demanded to park in the structure identified himself as a judge and drove a Corvette. Mr. Lee conveyed the information to Mr. Davis, the court administrator. Aside from the lack of evidence that the man was in fact a judge, Mr. Davis merely assumed that the man was Judge Bradfield because Mr. Davis knew Judge Bradfield to drive a Corvette. Mr. Davis testified that that was his only basis for connecting these two dots. This despite his awareness that other judges also drove Corvettes.

Even if the Commission accepts the Master’s finding that Judge Bradfield was involved in the incident, the lapse of time between the alleged incident and the filing of the formal complaint makes it unfair to require Judge Bradfield to defend against the charges. The passage of time has severely compromised Judge Bradfield’s ability to discover whether other persons may have witnessed the alleged exchange between Mr. Lee and Judge Bradfield. This count should be dismissed.

ARGUMENT IV

An Appropriate Sanction

Our Supreme Court in *In Re Brown*, 461 Mich 1291; 625 NW2d 744 (1999) identified the following considerations regarding sanctions:

- (a) misconduct that is part of a pattern of practice is more serious than an isolated incident or misconduct.
- (b) misconduct on the bench is usually more serious than the same misconduct off the bench. [Judge Bradfield's conduct occurred off the bench.]
- (c) misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety. [Judge Bradfield's conduct did not implicate the actual administration of justice. The incident at the 36th District Court occurred on the street and inside the judges' entrance to the building. The other incident of alleged conduct occurred at the Gem Theatre parking structure. Judge Bradfield was not presiding over court proceedings at the time of these incidents, nor did the incidents involve a litigant or attorney appearing before him in a pending matter.]
- (d) misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does. [Judge Bradfield's conduct did not implicate the actual administration of justice, nor its appearance of impropriety.]
- (e) misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated. [Judge Bradfield's conduct at the 36th District Court, and his alleged conduct at the Gem Theatre parking structure, assuming it happened, was spontaneous.]
- (f) misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery. [There have been no allegations that Judge Bradfield's conduct undermined the ability of the

justice system to discover the truth or to reach the most just result in a case, and there has been no evidence to support any such finding of misconduct.]

- (g) misconduct that involves the unequal application of justice on the basis of such considerations of race, color, ethnic background, gender, or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of a class of citizenship. [Judge Bradfield's conduct did not involve the unequal application of justice, and the Commission did not claim that it did.]

A reprimand is a sufficient sanction. A public reprimand has been imposed in cases involving much more serious conduct than that alleged here. In *In Re Templin*, 432 Mich 1220; 436 NW2d 663 (1989), the judge made substantive decisions in a high-profile criminal case while he was secretly dating the defendant, and failed to disclose that information or disqualify himself until it was discovered. Judge Templin received a public censure. See also, e.g., *In Re Ford*, 469 Mich 1252; 674 NW2d 147 (2004) (sexual harassment against a court employee, including unwelcome sexual contact and comments; judge accessed pornography on court computers; and pled guilty to aggravated assault); *In Re Justin*, 456 Mich 1220; 577 NW2d 71 (1998) (judge asked city to increase pension benefits for former district court employees; city denied the increased pension benefits; judge began assessing a persistence fee of \$100 or more payable to the county, instead of the usual fines and costs payable to the city); *In Re Cooley*, 454 Mich 1215; 563 NW2d 645 (1997) (judge produced radio and TV shows using court time, personnel, equipment and materials; personally incorporated the show as a for-profit corporation, and failed to report any of its funds with the SCAO); *In Re Jelselma*, 463 Mich 1229; 625 NW2d 751 (2001) (judge was publicly censured because he: (1) persistently failed to timely decide motions or promptly enter orders after matters were decided by the court; and (2) neither submitted replies nor requested additional time to respond to grievance letters). Similarly, *In Re O'Brien*, 441 Mich 1204; 494 NW2d 459 (1992), (the judge grabbed an airline supervisor's braided hair at the neck,

causing her head to jerk backwards, and verbally abused and insulted her at an airport). *In Re Thomas*, 441 Mich 1206; 494 NW2d 458 (1992), (the judge made seven harassing and obscene phone calls to another person. Misdemeanor charges were issued against the judge arising out of both the telephone calls and a related altercation).

In order to determine the applicable sanction, it is necessary to consider the judge's behavior itself and put that behavior into context. Judge Bradfield acknowledges the impropriety of his words and his actions, but his conduct cannot be divorced from the security concerns that motivated his conduct. Recall that the profane words were exchanged privately between Judge Bradfield and Mr. Adams when they were on the street. Judge Bradfield did not use profanity when he insisted that Mr. Adams not use the court's private entrance. The "altercation" did not escalate until Mr. Adams attempted to enter the court building through the judges' door, still not having identified himself.

A public reprimand is a sufficient sanction.

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Sworn to and subscribed to me
this ____ day of _____, 2005

Notary Public
My Commission Expires:


JUDGE DAVID MARTIN BRADFIELD

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